

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

KD, a minor child, by and through her	)	
parents and guardians, JD and SD,	)	
	)	
Plaintiff	)	
	)	
vs.	)	Case No. 2:12-cv-02734-HGD
	)	
MICHAEL WAYNE WOOTEN, et al.,	)	
	)	
Defendants	)	

**REPORT AND RECOMMENDATION**

Defendants Birmingham Board of Education (Board) and Aaron Moyana filed a Motion for Partial Judgment on the Pleadings. (Doc. 23). Plaintiff filed a response to the motion (Doc. 27), in which it is conceded that the motion is due to be granted.

Based on plaintiff's concession, it is RECOMMENDED that defendants' Motion for Partial Judgment on the Pleadings be GRANTED as to:

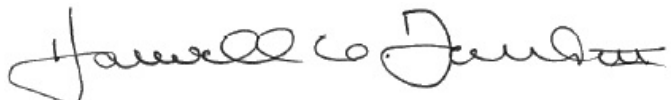
- (1) all state law claims against the Board for negligent, wanton and/or reckless hiring, training, supervision and retention, outrage and defamation, based on immunity;
- (2) all claims for punitive damages pursuant to 42 U.S.C. § 1983 against the Board; and
- (3) all official capacity claims against Moyana, including all claims for punitive damages against Moyana in his official capacity.

### NOTICE OF RIGHT TO OBJECT

The parties are DIRECTED to file any objections to this Report and Recommendation within a period of fourteen (14) days from the date of entry. Any objections filed must specifically identify the findings in the magistrate judge's recommendation objected to. Frivolous, conclusive, or general objections will not be considered by the district court.

Failure to file written objections to the proposed findings and recommendations of the magistrate judge's report shall bar the party from a *de novo* determination by the district court of issues covered in the report and shall bar the party from attacking on appeal factual findings in the report accepted or adopted by the district court except on grounds of plain error or manifest injustice. *Nettles v. Wainwright*, 677 F.2d 404 (5th Cir. Unit B 1982). *See Stein v. Reynolds Securities, Inc.*, 667 F.2d 33 (11th Cir. 1982). *See also Bonner v. Prichard*, 661 F.2d 1206 (11th Cir. 1981) (*en banc*), adopting as binding precedent all of the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

DONE this 2nd day of January, 2013.

A handwritten signature in dark ink, appearing to read 'Harwell G. Davis, III', is written over a horizontal line.

HARWELL G. DAVIS, III  
UNITED STATES MAGISTRATE JUDGE